

## 46 Am. Jur. 2d Judges § 43

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### Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

### VI. Privileges, Exemptions, and Disabilities

#### A. In General

## § 43. Judge holding other office

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### West's Key Number Digest

West's Key Number Digest, [Judges](#)  20, 21

At common law a judge cannot hold another office where the two offices are incompatible or, in other words, where their functions are inconsistent.<sup>1</sup> The constitutions or statutes of some states, in somewhat varying terms, expressly prohibit judges from holding any other office.<sup>2</sup> Statutes or constitutional provisions may also specifically prohibit judges from holding elective nonjudicial public offices,<sup>3</sup> or from becoming candidates for elective office.<sup>4</sup> Constitutional provisions prohibiting the exercise of the functions of one of the several departments of government by an officer of either of the others may prevent a judge from holding any other state office.<sup>5</sup>

The purpose of such prohibitory provisions is to exclude judicial officers from such extrajudicial activities as may tend to militate against the free, disinterested, and impartial exercise of their judicial function; the fact that no compensation is attached to the other office or employment does not take it out of the operation of a prohibition against holding another public office.<sup>6</sup> Under statute in at least one jurisdiction, a state judge must resign from the judicial position upon nomination for any public office other than the judgeship or automatically forfeit such judicial post.<sup>7</sup> A resign-to-run provision of the code of judicial conduct, requiring a judge to resign from judicial office upon becoming a candidate for an elective office, did not block an assistant judge's ability to express political views by running for office, so as to violate the judge's First Amendment rights; the state supreme court had a substantial interest in protecting the fairness, and perceived fairness, of judicial decision-making and minimizing the distraction of election campaigns.<sup>8</sup> Thus, an assistant judge violated the resign-to-run provision of the code of judicial conduct by becoming a candidate for probate judge without first resigning an assistant judge position; the provision unambiguously required the judge to resign from judicial office upon becoming a candidate for any elective office, not any nonjudicial elective office, and the provision did not lead to absurd results, since the public was entitled to require that assistant and probate judges devote their entire attention to the office to which they were elected.<sup>9</sup>

"Holding any office" in a political organization, under a judicial canon stating that a judge or judicial candidate may not act as a leader or hold any office in a political organization, means occupying a formal position with a recognized title or performing a function within the established organizational structure of an association whose principal purpose is to further the election or appointment of candidates to political office; an "office" in such an organization includes recognized titles such as chairman, director, secretary, treasurer, press secretary, precinct leader, membership recruiter, youth coordinator, and the like.<sup>10</sup> "Acting as a leader," in a political organization, under a judicial canon stating that a judicial candidate may not act as a leader or hold any office in a political organization, captures efforts to advance the political agenda of the party through proactive planning, organizing, directing, and controlling of party functions with the goal of achieving success for the political party; these leader-without-title positions would include acting formally or informally as a party spokesperson, organizing, managing, or recruiting new members, organizing or managing campaigns, fundraising, and performing other roles exerting influence or authority over the rank and file membership albeit without a formal title, including hosting political events.<sup>11</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Application by city's public advocate, pursuant to provision of the Charter of the City of New York allowing for a summary inquiry into any alleged violation or neglect of duty by a city official, to have city department of education and its former chancellor appear for a judicial summary inquiry concerning a contract for a computer software system that was ostensibly designed to manage special education service records did not violate state constitution's prohibition on Supreme Court justices holding any other public office or trust; a judicial summary inquiry controlled by a Supreme Court justice had all the hallmarks of a grand jury proceeding, which was a quintessential judicial proceeding. *N.Y. Const. art. 6, § 20. James v. Farina*, 171 A.D.3d 44, 96 N.Y.S.3d 220, 364 Ed. Law Rep. 1137 (1st Dep't 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 State ex rel. Murphy v. Townsend, 72 Ark. 180, 79 S.W. 782 (1904); Howard v. Harrington, 114 Me. 443, 96 A. 769 (1916).  
As to incompatibility of office, generally, see Am. Jur. 2d, Public Officers and Employees §§ 62 to 67.
- 2 People v. Larry C., 286 Cal. Rptr. 52 (App. 3d Dist. 1991); Wagner v. Milwaukee County Election Com'n, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816 (2003).
- 3 In re Greenwood, 796 P.2d 682 (Utah 1990).
- 4 Fonte v. Ansardi, 493 So. 2d 1206 (La. 1986).
- 5 State ex rel. Van Antwerp v. Hogan, 283 Ala. 445, 218 So. 2d 258 (1969).
- 6 Abbott v. McNutt, 218 Cal. 225, 22 P.2d 510, 89 A.L.R. 1109 (1933).
- 7 Signorelli v. Evans, 637 F.2d 853 (2d Cir. 1980); In re Schamel, 46 A.D.2d 236, 362 N.Y.S.2d 39 (3d Dep't 1974).
- 8 In re Hodgdon, 189 Vt. 265, 2011 VT 19, 19 A.3d 598 (2011).
- 9 In re Hodgdon, 189 Vt. 265, 2011 VT 19, 19 A.3d 598 (2011).
- 10 Winter v. Wolnitzek, 482 S.W.3d 768 (Ky. 2016).
- 11 Winter v. Wolnitzek, 482 S.W.3d 768 (Ky. 2016).

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